Supreme Court, U. S.
FILED
JUN 2 1980
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1979
No. 79-1775

ROBERT J. KONDRAT,
Petitioner,

vs.

PAUL MITROVICH, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WALLACE R. STEFFEN
NEIL E. ROBERTS
JAMES F. SWEENEY
GALLAGHER, SHARP, FULTON, NORMAN AND MOLLISON
Sixth Floor-Bulkley Building
Cleveland, Ohio 44115
(216) 241-5310
Attorneys for Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

TABLE OF CONTENTS

Table of Authorities I

Statement of Facts 1

Reasons for Denying the Writ 3

Prosecuting Attorneys Acting Within Their Official Capacities Are Immune From Suit for Malicious Prosecution 3

TABLE OF AUTHORITIES

Cases

Cooper v. O'Conner, 99 F.2d 135 (D.C. App. 1938), *cert. den.* 305 U.S. 643 (1938) 3

Imbler v. Pachtman, 424 U.S. 409 (1976) 2, 3

Statute

42 U.S.C. §1983 3

Supreme Court of the United States

October Term, 1979
No. 79-1775

ROBERT J. KONDRAT,
Petitioner,

vs.

PAUL MITROVICH, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF FACTS

Petitioner Robert Kondrat filed his Complaint in the Court of Common Pleas of Lake County, Ohio alleging that the Respondents Mitrovich (while the Lake County Prosecutor) and Futterer (while an Assistant Lake County Prosecutor) caused his "false and wrongful arrest."

REASONS FOR DENYING THE WRIT

PROSECUTING ATTORNEYS ACTING WITHIN THEIR OFFICIAL CAPACITIES ARE IMMUNE FROM SUIT FOR MALICIOUS PROSECUTION

The common law recognizes an absolute immunity protecting prosecuting attorneys from civil suit for malicious prosecution. *Cooper v. O'Connor,* 99 F.2d 135 (D.C. App. 1938), *cert. den.* 305 U.S. 643 (1938). The rationale of the rule was explained by this Court in *Imbler v. Pachtman,* 424 U.S. 409 (1976):

> The same considerations of public policy that underlie the common-law rule of absolute immunity of a prosecutor from a suit for malicious prosecution likewise dictate absolute immunity under §1983. Although such immunity leaves the genuinely wronged criminal defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty, the alternative of qualifying a prosecutor's immunity would disserve the broader public interest in that it would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system and would often prejudice criminal defendants by skewing post-conviction judicial decisions that should be made with the sole purpose of insuring justice.

The case at bar does not involve an alleged violation of 42 U.S.C. §1983. Rather, Petitioner's Complaint alleged only the common-law tort of malicious prosecution. The Respondents thus would have been immune even prior to *Imbler.*

The facts relative to Respondents' immunity are not in dispute. Petitioner's Complaint itself alleged that the Respondents acted in their capacity as County Prosecutor and Assistant County Prosecutor. The law has long been clear that the Respondents are immune while acting in their official capacities. The Ohio Court of Common Pleas and Court of Appeals correctly held that the Respondents were entitled to summary judgment based upon the undisputed facts. The Ohio Supreme Court correctly determined that this action presents no substantial Constitutional question. It is submitted that the Petitioner has cited no reason why this Honorable Court should abrogate the common-law immunity of prosecuting attorneys which exists universally in American jurisdictions.

It is therefore respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

WALLACE R. STEFFEN
JAMES F. SWEENEY
NEIL E. ROBERTS
GALLAGHER, SHARP, FULTON, NORMAN AND MOLLISON
Attorneys for Respondents

see 79

1710